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EXPEDIA, INC. dba EXPEDIA.COM
7

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 SEBASTIAN POGGEL,

12 Plaintiff,

13 vs.

14 LUFTHANSA GERMAN AIRLINES
and EXPEDIA, INC. dba
15 EXPEDIA.COM,

16 Defendants.
17

Case No.: CV12-4794 OW (JEMx)

**ANSWER AND AFFIRMATIVE
DEFENSES OF EXPEDIA, INC.**

18 Defendant Expedia, Inc., dba Expedia.com (hereinafter "Expedia"), by and
19 through its attorneys of record, Condon & Forsyth LLP, hereby answers plaintiff's
20 Complaint as follows:

21 1. Expedia is without knowledge or information sufficient to form a
22 belief as to the truth of the allegations in paragraph 1 of the Complaint and, on this
23 basis, denies said allegations.

24 2. Expedia denies the allegations in paragraph 2 of the Complaint,
25 except that Expedia admits that it is a Delaware corporation with its principal place
26 of business in Bellevue, Washington.

27 3. Expedia denies the allegations in paragraphs 3 and 4 of the Complaint.

28 4. Expedia is without knowledge or information sufficient to form a

1 belief as to the truth of the allegations in paragraphs 5 and 6 of the Complaint and,
2 on this basis, denies said allegations.

3 5. The statements contained in paragraph 7, 8, 9, 10 and 11 of the
4 Complaint do not appear to contain any factual allegations against Expedia. To the
5 extent that paragraphs 7, 8, 9, 10 and 11 can be construed to make any factual
6 allegations against Expedia, Expedia denies those allegations.

7 8 **FIRST AFFIRMATIVE DEFENSE**

9 6. Expedia's liability, if any, with respect to plaintiff's alleged damages
10 is further limited or excluded in accordance with its conditions of carriage,
11 conditions of contract and tariffs.

12 13 **SECOND AFFIRMATIVE DEFENSE**

14 7. Plaintiff's alleged damages are limited, excluded and/or preempted by
15 federal law, including the Federal Aviation Act of 1958, as amended (Pub. L. No.
16 5-726, 72 Stat. 731, formerly codified at 49 U.S.C. § 1301 *et seq.*), now re-codified
17 and incorporated into 49 U.S.C. § 40101 *et seq.*, and the provisions of the
18 corresponding regulations promulgated by the Federal Aviation Administration,
19 including but not limited to 14 C.F.R. §§ 91.11; 121.580; 135.120.

20 21 **THIRD AFFIRMATIVE DEFENSE**

22 8. Plaintiff's alleged damages are limited, excluded and/or preempted by
23 federal law, including the Airline Deregulation Act of 1978, Pub. L. No. 95-504,
24 92 Stat. 1705 (codified as amended at 49 U.S.C. §§ 40101-44310 (1994)). *See*
25 *Rowe v. New Hampshire Motor Transport Association*, 552 U.S. 364, 128 S. Ct.
26 989, 169 L. Ed. 3d 933 (2008); *Air Transport Association of America v. Cuomo*,
27 520 F.3d 218 (2d Cir. 2008).

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FOURTH AFFIRMATIVE DEFENSE

9. All claims of plaintiff relating to rates, routes and/or services provided by Expedia are expressly preempted by 49 U.S.C. § 41713.

FIFTH AFFIRMATIVE DEFENSE

10. The Complaint is barred on the grounds that it fails to state a claim upon which relief can be granted.

SIXTH AFFIRMATIVE DEFENSE

11. The incident alleged in the Complaint, and the damages plaintiff alleges he sustained as a result of the incident, were due to the negligence or other wrongful acts or omissions of persons or entities other than Expedia; however, in the event that a finding is made that negligence exists on the part of Expedia, which proximately contributed to the damages alleged in the Complaint, Expedia's liability, if any, should be reduced by an amount proportionate to the amount by which the comparative negligence of such other persons or entities contributed to the happening of the alleged incident and the damages upon which plaintiff seeks recovery.

SEVENTH AFFIRMATIVE DEFENSE

12. The incident alleged in the Complaint, and the damages plaintiff alleges he sustained as a result of the incident, were due to the negligence or other wrongful acts or omissions of persons or entities other than Expedia; however, in the event that a finding is made that liability exists on the part of Expedia, Expedia is entitled to indemnity and/or contribution from such persons or entities in direct proportion to their respective fault.

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EIGHTH AFFIRMATIVE DEFENSE

13. The incident alleged in the Complaint, and the damages plaintiff alleges he sustained as a result of the incident, were caused by intervening and superseding causes and were not caused by Expedia.

NINTH AFFIRMATIVE DEFENSE

14. Plaintiff's alleged damages, if any, should be barred or limited as a result of the failure of plaintiff to take reasonable steps to mitigate his damages.

TENTH AFFIRMATIVE DEFENSE

15. The incident alleged in the Complaint, and the damages plaintiff alleges he sustained as a result of the incident, if occasioned by fault, are attributable to the conduct of third persons or entities that Expedia had no control over at any time relevant hereto.

ELEVENTH AFFIRMATIVE DEFENSE

16. Venue is improper in the state of California under the doctrine of *forum non conveniens*.

TWELTH AFFIRMATIVE DEFENSE

17. The incident alleged in the Complaint, and the injuries and damages plaintiff alleges he sustained, were not proximately caused by an act or omission on the part of Expedia.

THIRTEENTH AFFIRMATIVE DEFENSE

18. The complaint fails to state facts sufficient to state a cause of action against Expedia upon which relief can be granted.

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FOURTEENTH AFFIRMATIVE DEFENSE

19. Plaintiff's complaint is barred by the equitable doctrine of unclean hands.

FIFTEENTH AFFIRMATIVE DEFENSE

20. Plaintiff's complaint is barred on the grounds that Expedia does not have money that in equity and good conscience belongs to plaintiff.

SIXTEENTH AFFIRMATIVE DEFENSE

21. Plaintiff's complaint is barred on the grounds that the contract as written did not express the terms of the actual agreement between the parties.

SEVENTEENTH AFFIRMATIVE DEFENSE

22. Plaintiff's complaint is barred on the grounds that Expedia's consent to the contract was not real or free because it was given or obtained through mistake.

EIGHTEENTH AFFIRMATIVE DEFENSE

23. Plaintiff's breach of contract claim is barred on the grounds that there was a mistake of fact with respect to the price of the airline passenger tickets purchased and plaintiff attempted to unfairly take advantage of that fact.

NINETEENTH AFFIRMATIVE DEFENSE

24. By conduct, representations and omissions, plaintiff is equitably estopped to assert any claim for relief against this defendant respecting the matters which are the subject of the complaint.

TWENTIETH AFFIRMATIVE DEFENSE

25. Plaintiff's claim is barred on the grounds that he will be unjustly

1 enriched if he prevails on his claim because he attempted to purchase two (2) first
2 class round-trip passenger tickets to Cape Town, South Africa, for approximately
3 \$11.00 per ticket, while these first class tickets normally sell for and are valued at
4 approximately \$10,000 per ticket.

5
6 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

7 26. No relief may be obtained under the complaint by reason of plaintiff's
8 failure to do equity in the matters alleged in the complaint.

9
10 WHEREFORE, defendant Expedia, Inc. respectfully requests that plaintiff
11 take nothing by this action against Expedia, Inc. that the action against Expedia,
12 Inc. be dismissed with prejudice and that the Court grant to Expedia, Inc. costs and
13 other relief as it deems just and proper

14
15 Dated: June 8, 2012

CONDON & FORSYTH LLP

16
17 By: /s/ Scott D. Cunningham

18 SCOTT D. CUNNINGHAM

19 IVY L. NOWINSKI

Attorneys for Defendant

EXPEDIA. INC. dba EXPEDIA.COM